

1 **Rule 65C. Post-conviction relief.**

2 **(a) Scope.** This rule governs proceedings in all petitions for post-conviction relief filed under the Post-
3 Conviction Remedies Act, Utah Code [Title 78B, Chapter 9](#). The Act sets forth the manner and extent to
4 which a person may challenge the legality of a criminal conviction and sentence after the conviction and
5 sentence have been affirmed in a direct appeal under [Article I, Section 12](#) of the Utah Constitution, or the
6 time to file such an appeal has expired.

7 **(b) Procedural defenses and merits review.** Except as provided in paragraph (h), if the court
8 comments on the merits of a post-conviction claim, it shall first clearly and expressly determine whether
9 that claim is independently precluded under Section [78B-9-106](#).

10 **(c) Commencement and venue.** The proceeding shall be commenced by filing a petition with the
11 clerk of the district court in the county in which the judgment of conviction was entered. The petition
12 should be filed on forms provided by the court. The court may order a change of venue on its own motion
13 if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for
14 the convenience of the parties or witnesses.

15 **(d) Contents of the petition.** The petition shall set forth all claims that the petitioner has in relation to
16 the legality of the conviction or sentence. The petition shall state:

17 (d)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

18 (d)(2) the name of the court in which the petitioner was convicted and sentenced and the dates of
19 proceedings in which the conviction was entered, together with the court's case number for those
20 proceedings, if known by the petitioner;

21 (d)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to
22 relief;

23 (d)(4) whether the judgment of conviction, the sentence, or the commitment for violation of
24 probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding,
25 the issues raised on appeal, and the results of the appeal;

26 (d)(5) whether the legality of the conviction or sentence has been adjudicated in any prior post-
27 conviction or other civil proceeding, and, if so, the case number and title of those proceedings, the
28 issues raised in the petition, and the results of the prior proceeding; and

29 (d)(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons
30 why the evidence could not have been discovered in time for the claim to be addressed in the trial,
31 the appeal, or any previous post-conviction petition.

32 **(e) Attachments to the petition.** If available to the petitioner, the petitioner shall attach to the
33 petition:

34 (e)(1) affidavits, copies of records and other evidence in support of the allegations;

35 (e)(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct
36 appeal of the petitioner's case;

37 (e)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil
38 proceeding that adjudicated the legality of the conviction or sentence; and

39 (e)(4) a copy of all relevant orders and memoranda of the court.

40 **(f) Memorandum of authorities.** The petitioner shall not set forth argument or citations or discuss
41 authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall
42 be filed with the petition.

43 **(g) Assignment.** On the filing of the petition, the clerk shall promptly assign and deliver it to the judge
44 who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall
45 assign the case in the normal course.

46 **(h)(1) Summary dismissal of claims.** The assigned judge shall review the petition, and, if it is
47 apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the
48 petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating
49 either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent
50 by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.
51 The order of dismissal need not recite findings of fact or conclusions of law.

52 (h)(2) A claim is frivolous on its face when, based solely on the allegations contained in the
53 pleadings and attachments, it appears that:

54 (h)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

55 (h)(2)(B) the claim has no arguable basis in fact; or

56 (h)(2)(C) the claim challenges the sentence only and the sentence has expired prior to the
57 filing of the petition.

58 (h)(3) If a claim is not frivolous on its face but is deficient due to a pleading error or failure to
59 comply with the requirements of this rule, the court shall return a copy of the petition with leave to
60 amend within 21 days. The court may grant one additional 21-day period to amend for good cause
61 shown.

62 (h)(4) The court shall not review for summary dismissal the initial post-conviction petition in a
63 case where the petitioner is sentenced to death.

64 **(i) Service of petitions.** If, on review of the petition, the court concludes that all or part of the petition
65 should not be summarily dismissed, the court shall designate the portions of the petition that are not
66 dismissed and direct the clerk to serve a copy of the petition, attachments and memorandum by mail
67 upon the respondent. If the petition is a challenge to a felony conviction or sentence, the respondent is
68 the state of Utah represented by the Attorney General. In all other cases, the respondent is the
69 governmental entity that prosecuted the petitioner.

70 **(j) Appointment of pro bono counsel.** If any portion of the petition is not summarily dismissed, the
71 court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent
72 the petitioner in the post-conviction court or on post-conviction appeal. In determining whether to appoint
73 counsel the court shall consider whether the petition or the appeal contains factual allegations that will

74 require an evidentiary hearing and whether the petition involves complicated issues of law or fact that
75 require the assistance of counsel for proper adjudication.

76 **(k) Answer or other response.** Within 30 days after service of a copy of the petition upon the
77 respondent, or within such other period of time as the court may allow, the respondent shall answer or
78 otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer
79 or other response upon the petitioner in accordance with Rule [5\(b\)](#). Within 30 days (plus time allowed for
80 service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may
81 respond by memorandum to the motion. No further pleadings or amendments will be permitted unless
82 ordered by the court.

83 **(l) Hearings.** After pleadings are closed, the court shall promptly set the proceeding for a hearing or
84 otherwise dispose of the case. The court may also order a prehearing conference, but the conference
85 shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing
86 conference, the court may:

- 87 (l)(1) consider the formation and simplification of issues;
- 88 (l)(2) require the parties to identify witnesses and documents; and
- 89 (l)(3) require the parties to establish the admissibility of evidence expected to be presented at the
90 evidentiary hearing.

91 **(m) Presence of the petitioner at hearings.** The petitioner shall be present at the prehearing
92 conference if the petitioner is not represented by counsel. The prehearing conference may be conducted
93 by means of telephone or video conferencing. The petitioner shall be present before the court at hearings
94 on dispositive issues but need not otherwise be present in court during the proceeding. The court may
95 conduct any hearing at the correctional facility where the petitioner is confined.

96 **(n) Discovery; records.**

97 [\(n\)\(1\)](#) Discovery under Rules [26](#) through [37](#) shall be allowed by the court upon motion of a party
98 and a determination that there is good cause to believe that discovery is necessary to provide a party
99 with evidence that is likely to be admissible at an evidentiary hearing.

100 [\(n\)\(2\)](#) The court may order either the petitioner or the respondent to obtain any relevant transcript
101 or court records.

102 [\(n\)\(3\) All records in the criminal case under review, including the records in an appeal of that](#)
103 [conviction, are deemed part of the trial court record in the petition for post-conviction relief. A record](#)
104 [from the criminal case retains the security classification that it had in the criminal case.](#)

105 **(o) Orders; stay.**

106 (o)(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and
107 conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony
108 conviction, the order shall be stayed for 7 days. Within the stay period, the respondent shall give
109 written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new

110 sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these
111 rules and by the [Rules of Appellate Procedure](#).

112 (o)(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay
113 shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release
114 the petitioner.

115 (o)(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial
116 court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail,
117 discharge, or other matters that may be necessary and proper.

118 **(p) Costs.** The court may assign the costs of the proceeding, as allowed under Rule [54\(d\)](#), to any
119 party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the
120 governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of
121 Corrections, Utah Code [Title 78A, Chapter 2, Part 3](#) governs the manner and procedure by which the trial
122 court shall determine the amount, if any, to charge for fees and costs.

123 **(q) Appeal.** Any final judgment or order entered upon the petition may be appealed to and reviewed
124 by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to
125 those courts.

126 [Advisory Committee Notes](#)